

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-473-WS – ORDER NO. 2010-_____
AUGUST ___, 2010

IN RE: Application of Tega Cay Water)
Service, Inc. for Adjustment)
of Rates and Charges and) **ORDER APPROVING REDUCED RATES**
Modifications to Certain Terms and)
Conditions for the Provision of)
Water and Sewer Service.)
_____)

I. INTRODUCTION

This matter came before the Public Service Commission of South Carolina (“the Commission”) on Application of Tega Cay Water Service, Inc. (“TCWS” or the “Company”) for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water Service filed February 16, 2010 (hereafter, the “Application”). The Application was heard on July 13, 2010, in the Commission’s hearing room located at Synergy Business Park, 101 Executive Center Drive, Saluda Building, Columbia, SC (the “Hearing”).

Present at the hearing were John M.S. Hoefer and Benjamin P. Mustian for TCWS; Jeffrey M. Nelson for Office of Regulatory Staff (ORS); and James W. Sheedy and Susan E. Driscoll for the City of Tega Cay (the “City”), whose Petition to Intervene was granted by the Commission. Randall Dong served as legal counsel to the Commission. Certain customers of TCWS also submitted materials to the Commission or

appeared as protestants in this case: Donna K. Britsch, Frank Adams, Gina Reardon, Karol and John Patyk, Marcia and Ed Gay, and Sue Tannenbaum. These eight customers did not speak at the Hearing, but Ms. Britsch did offer testimony at the public hearing held on May 19, 2010.

TCWS is a National Association of Regulatory Utility Commissioners (“NARUC”) Class B water and wastewater utility. TCWS provides water and wastewater service to City and certain of its residents. According to the Application, as of December 31, 2008 TCWS has 1,645 residential and commercial water customers, and 1,550 residential and commercial sewer customers, all within the municipal limits of City, served by water transmission and sewer collection lines, pump stations and package plants (hereafter, collectively, the “System”). TCWS purchases its water wholesale from York County.

The appropriate test year period for purposes of this proceeding is the twelve month period ending December 31, 2008. The test year is contained in the application of TCWS as well as the testimony and exhibits of the parties’ witnesses in this case. The establishment of a test year is a fundamental principle of the ratemaking process. Heater of Seabrook v. S.C. Pub. Serv. Comm’n, 324 S.C. 56, 478 S.E. 2d 826 (1996). The establishment of a test year is used to calculate what a utility’s expenses and revenues are for the purposes of determining the reasonableness of a rate. The test year is established to provide a basis for making the most accurate forecast of the utility’s rate base, revenues, and expenses in the near future when the prescribed rates are in effect. Porter v. S.C. Pub. Serv. Comm’n, 328 S.C. 222, 493 S.E.2d 92 (1997). It also provides the Commission with a basis for estimating future revenue requirements. In the present case,

the Commission has concluded that the appropriate test year to use is the twelve-month period ending December 31, 2008. No party contested the use of this test year as proposed by TCWS in its Application.

In accordance with the Application filed in this case, the Commission will use the rate of return on rate base methodology in determining the reasonableness of TCWS' proposed rates. The Public Service Commission has wide latitude in determining an appropriate rate-setting methodology. Heater of Seabrook, 324 S.C. at 64, 478 S.E.2d at 830. Here, the Applicant has submitted evidence of substantial plant investment, and ORS has conducted its analysis and based its recommendations on a rate of return methodology. City also used the rate of return methodology in its analysis of the Application. No party has raised any objection to the use of the return on rate base methodology in this proceeding.

No one controverted the charges and modifications to certain terms and conditions for the provision of water service set forth in the Application. Likewise, ORS and City did not argue or offer evidence that no customer rate increase should be granted. Rather, at issue in this case is the request of TCWS for a customer rate increase of approximately 22%, or \$235,621 in additional annual water and sewer revenues. ORS and City opposed the requested rate increase as excessive. TCWS last sought and received approval of a rate increase from the Commission on October 9, 2006. See Order Approving Rates and Charges, Order No. 2006-582, Docket No. 2006-97-WS.

II. PROCEDURAL BACKGROUND

The Commission instructed TCWS to publish a prepared Notice of Filing in a newspaper of general circulation in the areas affected by the Application. The Notice of

Filing indicated the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings. In the same correspondence, the Commission also instructed TCWS to notify each customer affected by the Application. TCWS furnished the Commission with an Affidavit of Publication demonstrating that the Notice of Filing had been duly published and a letter in which TCWS certified compliance with the Commission's instruction. The Commission issued a Notice of Filing and Hearing in this matter on February 26, 2010, setting this matter for a full hearing before the Commission originally on June 7, 2010 which was subsequently rescheduled for July 13, 2010.

On March 24, 2010, the Commission issued Order No. 2010-225 granting a request for a local public hearing and ordered the Commission Staff to schedule a public hearing. A public hearing was then set and noticed by the Commission to be held at the Glennon Conference Center in Tega Cay on May 19, 2010. Approximately Two Hundred (200) boisterous customers of TCWS attended the public hearing. Nineteen (19) customers addressed the Commission with various concerns regarding TCWS' quality of service, water quality, billing and rates. A petition signed by Senators Robert W. Hayes, Jr. and Mick Mulvaney, and Representatives Ralph Norman and Greg Delleney was presented to the Commission opposing the rate increase, among other reasons, because of statewide and local economic conditions. A petition was also presented to the Commission signed by five hundred sixty-seven (567) customers of TCWS opposing the rate increase, which was submitted as Exhibit 3 at the Hearing.

Between the date of filing of the Application and the date of the Hearing, ORS made on-site investigations of TCWS's facilities, examined its books and records and gathered detailed information concerning its operations.

III. EVIDENCE, INCLUDING ANY RULINGS THEREON

Before the Commission as evidence were the public, direct and rebuttal or surrebuttal testimonies of Representative Ralph Norman, Pauline M. Ahern, Bruce T. Haas, Carl Daniel, Steven M. Lubertozi, Karen Sasic, Gerald C. Hartman, Christina A. Stutz, Douglas H. Carlisle Ph.D., and Willie J. Morgan. Except for the testimonies of Christina A. Stutz, Douglas H. Carlisle Ph.D. and Willie J. Morgan which were stipulated among TCWS, ORS and City to be admitted as pre-filed, with which the Commission agreed, all of the witnesses were available for examination by TCWS, ORS, City and the Commission. Twenty-nine hearing exhibits were entered.

Included in the twenty-nine exhibits was an amendment to Exhibit GCH-5 of Gerald C. Hartman's pre-filed direct testimony, which consisted of pages 3-37 and 3-38 to his 1998 valuation report of the System that was done for the City. This amendment to Exhibit GCH-5 was in complete resolution of TCWS's motion in *limine* challenging the admissibility of certain pre-filed surrebuttal testimony by Gerald C. Hartman. As a result, the pre-filed surrebuttal testimony by Gerald C. Hartman was admitted without objection, as was all of his live testimony taken without objection.

At the beginning of the public hearing held on May 19, 2010, counsel for TCWS lodged a continuing objection intended to apply to the public hearing testimony and any evidence introduced thereat, and to the Hearing, including evidence presented at that time, with a request for a ruling on the objection when the final order was issued in this

case. The objection was to customer testimony about quality of service not substantiated by data or not based on scientific criteria. (Transcript of Testimony and Proceedings May 19, 2010, vol. 1, pp. 11-12). In support of this objection, counsel for TCWS cited Patton v. Public Service Commission, 280 S.C. 288, 312 S.E.2d 257 (1984); Tega Cay Water Service, Inc. v. South Carolina Public Service Commission, C.A. No.: 97-CP-40-0923 (Tr. Ord., Judge Barber, James R.) (S.C. Com. Pl. Sept. 28, 1998); and Commission Order No. 1999-191, Docket No. 96-137-WS (March 16, 1999).

ORS responded that customer complaints do not have to be corroborated or substantiated. Further, ORS requested that TCWS put its objections to specific testimony in writing and file such writing electronically on the website of the Commission and afford ORS an opportunity to respond in writing to TCWS's objections to specific testimony.

City disagreed that TCWS was entitled to a continuing general (rather than specific) objection to all customer testimony about quality of service. City also indicated each objection had to be based on the South Carolina Rules of Evidence. It was premature to conclude summarily that all customer testimony was inadmissible, irrelevant and without probity for a trier of fact to weigh, until the testimony itself had been at least proffered. It is indeed within the province of the Commission for it to determine reasonable requirements for ensuring adequacy of service to TCWS's customers. See Seabrook Island Property Owners Ass'n v. South Carolina Public Service Commission, 303 S.C. 493, 499, 401 S.E.2d 672, 675 (1991) (emphasis added) ("It is incumbent upon the PSC to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also

distribute fairly the revenue requirements, considering the price at which the company's service is rendered and *the quality of that service.*"). See also Commission Order No. 2009-191, Docket No. 2007-286-WS (May 29, 2009) 2009 WL 2987189, *16 ("The Public Service Commission is within its statutory authority to hold public hearings and consider public testimony."). See also S.C. Code Ann. § 58-5-710 (Grants Commission the right, upon petition by any interested party, to require utility to appear and show cause as to why it should not be required to take necessary steps to provide "adequate and proper service to its customers.").

TCWS's counsel did not oppose ORS's suggested procedure. (Transcript of Testimony and Proceedings May 19, 2010, vol. 1, p.17). The Commission adopted this procedure and said ORS and City could respond in writing to any specific objections. TCWS has not filed any specific objections on the website. It has, however, objected to consideration of a CD offered by customer Donna Britsch. TCWS claims the pictures are not of the System. This objection is sustained insofar as there is no sworn testimony that the pictures are in fact of the System. Otherwise, there are no specific objections by TCWS on file with the Commission to any of the customer testimony and exhibits presented at the public hearing or the Hearing.

While it is true that Patton v. Public Service Commission, 280 S.C. at 292, 312 S.E.2d at 259, states that decisions of the Commission must be supported by substantial evidence, it is incorrect to suggest or imply that quality of service is irrelevant to ratemaking. Patton itself provides that quality of service is indeed a factor justifying a reduction by the Commission to the rates sought by TCWS for approval. Id., 280 S.C. at 293, 312 S.E.2d at 260. No one has suggested in this case that the Commission adopt a

rate of return different from the expert testimony, or without reasonable explanation supported by the evidentiary record. Therefore, consideration of the customer testimony is not afoul of Commission Order No. 1999-191, Docket No. 96-137-WS (March 16, 1999) and the decisions cited therein.

IV. THE RATE REQUEST

In its Application, as supported by its testimony and exhibits offered at the Hearing, TCWS seeks to increase water rates by 21.9% and sewer rates by 21.5%, in order to achieve a return on equity of 11.7%, which translates into a rate of return of approximately 8.98%, additional annual revenue of \$235,621, and an operating margin of 12.1%, on its jurisdictional rate base, including improvements to the System placed in service through the date of the Hearing. (Application of Tega Cay Water Service, Inc., p. 37; Transcript of Testimony and Proceedings, July 13, 2010, vol. 2. (Hearing Tr.) pp. 401, 416-418.) Although TCWS's expert, Pauline M. Ahern, opined that an appropriate return on equity would be in the range of 10.9% to 11.45%, (Hearing Tr. pp. 206, 208), TCWS's witness Steven M. Lubertoizzi conceded that, given the accounting adjustments by ORS with which TCWS agrees (including for improvements to the System placed in service through the date of the Hearing), the mid-point of expert Ahern's recommended range for return on equity would yield rates and revenues above those noticed in the Application, which would be legally impermissible. S.C. Code Ann. § 58-5-240 (Supp. 2006); (Hearing Tr. 416.) TCWS admitted at the hearing that it was not asking the Commission to approve rates in accordance with Ms. Ahern's range of return on equity and was "therefore seeking rates consistent with the rates contained in the original filing and customer notice." (Hearing Tr. p. 413.) Hence, using the rates as noticed in the

Application and considering the accounting adjustments of the ORS with which TCWS agrees, witness Lubertozi testified that an appropriate return on common equity would be 9.6%. (Hearing Tr. p. 413.)

There is no significant disagreement among TCWS, ORS and City with respect to return on equity and rate of return. The testimony and exhibits of ORS's expert Douglas H. Carlisle Ph.D. conclude that, in this case, an appropriate return on equity would be 9.57% and an appropriate rate of return would be 7.99%. (Hearing Exhibit 28, p.1.) While the direct testimony of City's expert Gerald C. Hartman contained a suggested rate of return not to exceed 8.36%, after his review of TCWS's and ORS's direct testimonies and of TCWS's rebuttal testimony he accepted in his surrebuttal testimony a number of the accounting adjustments proposed by ORS and adopted by TCWS, which led to his support of a 7.99% rate of return. (Hearing Tr. pp. 458, 462.) This rate of return (7.99%) obviously equates to a return on equity of 9.6%.

Here, the dispute between TCWS, on the one hand, and ORS and City, on the other hand, is over the operating margin that should be approved. To be clear, the Commission sees this rate case as a disagreement over the total allowable operating expenses of TCWS, and the effect that necessarily has on the rates requested by TCWS. In other words, as the allowable operating expenses of TCWS are reduced, less revenue is required for TCWS to achieve a return on equity of 9.6% and a rate of return of 7.99%.

V. THE AGREED ACCOUNTING ADJUSTMENTS

ORS conducted an audit of TCWS's operations which led to ORS's conclusion in its direct testimony that the requested additional revenue should only be \$130,753. (Hearing Tr. p. 459, Exhibit 24, p. 14.) However, in its surrebuttal testimony, ORS

adjusted its entry for gross plant because of two ultraviolet disinfection units and two phosphorous control units that were placed in operation during the pendency of this proceeding, resulting in a net adjustment of \$682,909. So after all of its accounting adjustments, ORS opined that TCWS was entitled to additional water and sewer revenue of \$204,556.

City's expert Hartman agreed with the accounting adjustments proposed by ORS. He offered an additional adjustment for excessive infiltration / inflow of 23% into the sewer system of TCWS. This adjustment for infiltration / inflow totaled \$81,486. The effect of this expense adjustment when considered with Hartman's other accounting adjustments resulted in proposed allowable service revenue of \$89,669 based on a rate of return of 7.99%. Although ORS did not offer any testimony on infiltration / inflow, ORS did not disagree with the expense adjustment for infiltration / inflow.

In its Application, TCWS asked for \$235,621 in additional water and sewer revenue. TCWS agreed with all of the accounting adjustments advocated by ORS (i.e., gross plant, total operating revenues and uncollectible accounts, maintenance expenses, general expenses, depreciation, taxes other than income, deferred income taxes – state & federal, income taxes – state & federal, amortization CIAC expense, and interest during construction), except for one: rate case expenses and their amortization period. As a result, TCWS changed its service revenue request.

The Commission finds that by accepting all the adjustments as proposed by ORS witnesses Stutz and Morgan, the Company's test year return on rate base is 4.56% and its current operating margin is 3.38%. Therefore, the Commission finds that an adjustment of TWCS's rates and charges is warranted. An increase in rates and charges appears justified

for the Company to provide its residential and commercial customers with safe and adequate water and wastewater services.

To determine a proper increase in such rates and charges, the Commission must consider the remaining differences in service revenue among TCWS, ORS and City: rate case expenses; their amortization period; and the adjustment for infiltration / inflow in the sewer system of TCWS.

VI. THE DISAGREEMENTS OVER EXPENSES

A. Rate Case Expenses and Their Amortization

ORS's witness Stutz testified in her surrebuttal testimony that she used the actual rate case expenses of \$75,588 alleged by TCWS as having been incurred and then amortized such expenses over a five year period. (Hearing Tr. p. 528.) She chose a five year period based on the time between previous rate cases of TCWS. Since TCWS's last three rate case filings were in 1992, 1996 and 2006, the average time between them is 4.67 years, rounded by her to 5 years. (Hearing Tr. p. 529.)

TCWS's witness Lubertoizzi took issue with this in two respects. First, he projected that rate expenses would total \$126,886, and asked that his projected figure or the actual amount through the hearing date be included. (Hearing Tr. p. 399.) Second, he disagreed that a five year amortization period was reasonable. He said a three year period should be used. (Hearing Tr., p. 413).

The Commission is disinclined to include projected rate case expenses in TCWS's rate base pro forma upon which its request for additional service revenue is predicated. The Commission concludes that the actual rate case expenses of \$75,588 that were allegedly incurred are the appropriate amount. Neither ORS nor City offered any

evidence to suggest this figure of \$75,588 was suspect or questionable. TCWS did not put into evidence the actual rate case expenses incurred through the hearing date. TCWS did not ask at the Hearing for the right to supplement its actual rate case expenses after the Hearing, nor did TCWS offer any further information on its expenses after the Hearing. The Commission has no evidence upon which to justify an award other than \$75,588.

Similarly, the Commission was given no basis by TCWS for a three year amortization period. TCWS's witness Lubertoizzi testified as to the period but then did not explain his methodology for choosing three years. He did not say why three years is more appropriate for this filing. ORS's witness Stutz provided a rational basis and a methodology easy to follow for her choice of a five year amortization period. Furthermore, her methodology, i.e., the time between previous rate cases, is wholly within the control of TCWS. In effect, TCWS has determined its own amortization period. The Commission agrees that \$75,588 should be amortized over five years.

B. The Expense Adjustments for Infiltration / Inflow

This adjustment pertains only to sewer. Infiltration is when external matter or fluid enters the sewer infrastructure below the water table. Inflow is when external matter or fluid enters the sewer infrastructure above the water table. Either way, the result of this unintended intrusion into the sewer infrastructure is the collection, treatment and disposal of such matter or fluid at an expense to the utility provider which is passed through to the customer. Infiltration and inflow increase the cost of treatment incurred by the utility provider. Although infiltration and inflow are obviously not metered and

separately billed to the customers, they pay for it in that such cost is included in total treatment expense. Excessive costs that run up the customer's bill should be deducted.

No party to this proceeding disagreed that all sewer systems have infiltration and inflow. Nor did any party offer any testimony or other evidence that the industry standard for typical or acceptable infiltration and inflow into a sewer system is higher than 15% of the total flow delivered for treatment. Rather, the question is whether TCWS has infiltration and inflow into its sewer system greater than 15% which would be considered excessive under industry standards thereby justifying a reduction in its pro forma expenses.

City's expert Hartman testified that he studied infiltration and inflow into the sewer system of TCWS based on data furnished to him by TCWS for the period 1992 through 1998. (Hearing Tr. p. 505.) He concluded from TCWS's data and his inspection of the sewer portion of the System that TCWS has excessive infiltration and inflow of 23% above the industry standard. Based on this conclusion, he reduced the following line items in the pro forma operating expenses of TCWS: salaries and wages – maintenance, purchased power, maintenance and repair, maintenance testing, chemicals, outside services – other, and miscellaneous. The total reduction was \$81,486. (Hearing Tr. p. 447.)

Hartman said that City sought in discovery in this rate case “any and all Documents relating to the I/I of TCWS for each of the last three fiscal years,” in response to which TCWS stated that it was not in possession of any information. (TCWS's Responses to City of Tega Cay's Requests for Production, No. 5, Exhibit 25, pp. 2-3). He also said City asked TCWS to “indicate the percentage of I/I currently experienced by

TCWS.” Again, TCWS answered that it was not in possession of any information. (TCWS’s Responses to City of Tega Cay’s Interrogatories, No. 9, Exhibit 25, pp. 8-9.). Without current data on the sewer portion of the System, Hartman was unable to update his infiltration and inflow conclusion that TCWS had 23% above the industry standard. Nevertheless, Hartman averred that his conclusion of 23% was well-substantiated and empirically correct given his review of seven years of data supplied by TCWS and the inspection of the sewer portion of the System.

Basically, TCWS replied, first, that Hartman’s figures which he contended warranted his conclusion that the sewer portion of the System had excessive infiltration and inflow, were, from a volumetric standpoint, within DHEC’s suggested limits set forth in an October 2000 publication entitled “South Carolina Sanitary Sewer Overflow Compliance and Enforcement” (Hearing Tr. pp. 311-12.) and, therefore, could not possibly be excessive. Second, TCWS attempted dramatically to show that City had not actually sought the correct information in discovery and if it had, Hartman would not have to rely on old data for his 23% conclusion.

The Commission finds TCWS’s reply to be unpersuasive. TCWS’s reliance on the DHEC guideline leads to a non-sequitur. Just because the infiltration and inflow in the sewer portion of the System does not, from a volumetric standpoint, appear to constitute a sufficient threat to public health, welfare or safety to cause DHEC to institute environmental enforcement activity (which would not even occur for violation of a guideline), does not mean it is within industry standard, non-excessive and a proper expense to bill customers. A System condition may have a rate impact regardless of compliance with certain suggested environmental guidelines.

On TCWS's second point, the Commission asked TCWS to offer a witness on the data utilized to compute infiltration and inflow. TCWS said that it had no witness. (Hearing Tr. pp. 509-511.) Furthermore, TCWS did not ask to supplement the record after the Hearing. It appears to the Commission TCWS responded to City's discovery in a forthright manner: TCWS is not in possession of any information about infiltration and inflow.

Hartman used the only available evidence. He disclosed the data and facts in his testimony on which he based his opinion. Under Rule 702, SCORE, an expert may testify as to a fact in issue in the form of an opinion. Such opinion may be based on facts or data "perceived by or made known to the expert at or before the hearing." Rule 703, SCORE. "Where an expert's testimony is based upon facts sufficient to form the basis for an opinion, the trier of fact determines its probative value." Normandy Corp. v. South Carolina Dept. of Transp., 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2009). TCWS was not able to discredit Hartman's opinion testimony. TCWS did not offer any testimony or documents to contradict Hartman's opinion. The Commission, therefore, adopts Hartman's conclusion that the sewer portion of the System has excessive infiltration and inflow, for which an expense reduction of \$81,486 is appropriate.

VII. THE DISAGREEMENT OVER QUALITY OF SERVICE

As set forth herein above, the Commission is required to consider quality of service as a factor in its determination of whether to approve a requested rate increase. Patton, 280 S.C. at 293, 312 S.E.2d 257, 260, *quoting* State Ex rel. Util. Com'n v. General Tel. Co., 285 N.C. 671, 208 S.E.2d 681 (1974), "[t]he quality of service rendered is, necessarily, a factor to be considered in fixing the 'just and reasonable' rate therefor."

"It is incumbent upon the PSC to approve rates which are just and reasonable, not only producing revenues and an operating margin within a reasonable range, but which also distribute fairly the revenue requirements, considering the price at which the company's service is rendered and *the quality of that service*." Seabrook Island Property Owners Ass'n, 303 S.C. at 499, 401 S.E.2d 672, 675 (emphasis added). South Carolina law mandates that the Commission hold a public hearing to obtain testimony from customers in a rate case. S.C. Code Ann. § 58-5-240(B); Reg. 103-804(J); 103-817(C)(3)(c); 103-836. While testimony about quality of service may not be the sole basis for the Commission's adoption of a rate different from the admitted expert testimony, C.A. No.: 97-CP-40-0923 (Tr. Ord., Judge Barber, James R.) (S.C. Com. Pl. Sept. 28, 1998), quality of service may nevertheless be weighed by the Commission as the trier of fact in resolving disputed expert testimony over pro forma operating expenses as is the case here.

The Commission has no basis for challenging the genuineness of the testimony of TCWS's witness Daniel when he says, "Tega Cay Water seeks to provide its customers with the best possible service." (Hearing Tr. p. 330.) The Commission also cannot assess based on the record whether black goo from faucets or black rings around plumbing fixtures or any of the other materials provided by customers are caused by TCWS or York County's water as suggested by TCWS or its customers themselves. Regardless, the substance of this testimony and the documentary evidence accompanying it is unforgettable by the Commission even though it does not sway the Commission's decision in this case.

However, there are certain indisputable facts in evidence about quality of service which are quite persuasive and very relevant to the Commission's decision. The Commission held a public hearing at which, compared to its other public hearings over the years, a banner number of TCWS customers were in attendance; and very few, if any, had accolades to share about TCWS's quality of service. While there was at least one billing complaint, (Transcript of Testimony and Proceedings May 19, 2010, vol. 1, pp. 48, 52-54.), the bulk of the customer testimony at the public hearing concerned service problems. (Transcript of Testimony and Proceedings May 19, 2010, vol. 1, pp. 22-23, 24, 26, 33-34, 45, 54, 69-72, 87, 105.)

A customer petition was offered to the Commission signed by 567 customers of TCWS. TCWS's customer service manager Karen Sasic testified that there were 476 complaints received in 2008 of which only 88 pertained to billing, and 678 complaints received in 2009 of which only 25 were about billing. (Hearing Tr. p. 431.) She said non-billing complaints related to quality of service (e.g., air in the line, clogged sewer, discolored water). (Hearing Tr. p. 434.) Although TCWS apparently has some water customers that are not sewer customers, and the converse may be equally true, most of its customers receive both water and sewer from TCWS. Hence, if the Commission assumes roughly 500 complaining customers (instead of cumulating the complaining customers), it looks to the Commission like a statistically significant percentage of TCWS's customers have ongoing complaints, maybe as many or more than one out of every three.

Because most of the customer complaints were not about billing and could actually support Hartman's testimony about infiltration and inflow (which was not controverted by TCWS), the Commission views this as yet another reason to adopt

Hartman's accounting adjustment of \$81,486. Yet the Commission also wants TCWS to mitigate its volume of customer complaints about quality of service which are unrelated to billing. For that reason, the Commission also orders TCWS to conduct periodic informational sessions no less frequently than twice a year with its customers and ORS in an effort to formulate an action plan to resolve non-billing complaints about the System. TCWS through its witness Haas expressed at least some willingness to do this. (Hearing Tr. pp. 307-08.)

VIII. INDISPUTABLE ECONOMIC CONDITIONS

The Commission is not a sequestered tribunal existing in a vacuum oblivious to current economic conditions. These are very hard and difficult economic times in which we all live. Our nation, our region, our State especially and the locality of Tega Cay in particular have been slammed by an economic recession that has seemingly spared no one. It is well-known that the Legislature in this State has been challenged for the last few years at budget time. At this time, the State has had four bank failures, Beach First, Woodland, First National of Spartanburg and Williamsburg National. Representative Norman testified that effective unemployment in York County has hit 22%. (Hearing Tr. p. 129.) He also remarked about the volume of foreclosures and short sales in York County, which is where City is located, including the area served by TCWS. (Id.) His point is that customers of TCWS all of whom are within the City are facing enough financial strain without having to also weather a 22% utility rate increase. (Id.)

"What annual rate will constitute just compensation depends upon many circumstances, and must be determined by the exercise of a fair and enlightened judgment, having regard to all relevant facts. ... A rate of return may be reasonable at

one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally." Bluefield Waterworks & Imp. Co. v. Public Service Commission of W. Va., 262 U.S. 679, 692-93, 43 S. Ct. 675, 679 (1923), *cited by* Seabrook Island Property Owners Association, 303 S.C. 493, 401 S.E.2d 672.

The Commission is aware that TCWS is entitled to a reasonable rate of return on its investment; but at the same time, although the Commission is constrained by the evidence in the record, it is also responsible for resolving disputed facts such as exist in this case. As the Commission believes TCWS's quality of customer service further supports the Commission's decision to adopt Hartman's accounting adjustment for infiltration and inflow, the Commission also recognizes that the accounting adjustments for rate case expenses and infiltration and inflow yield a customer rate increase better suited to these economic times.

IX. CONCLUSION

In considering the Application of TCWS, the Commission must consider competing interests; the interests of the customers of the system to receive quality service and a quality product at a fair rate as well as the interest of the Company to have the opportunity to earn a fair rate of return. The Commission must give due consideration to TCWS's total revenue requirements, comprised of both the opportunity to earn a fair return on equity as well as allowable operating costs. To accomplish this, the Commission has reviewed evidence admitted into the record regarding the operating revenues and operating expenses of TCWS, and has determined adequate and reasonable levels of revenues and expenses for the Company. The Commission has also established

a fair rate of return on equity based on the record established in this case. In this case, the record establishes that a rate increase is warranted for the Company, so the Commission has set rates which are just and reasonable and free from undue discrimination.

For the reasons set forth in detail herein above, the Commission accepts ORS's proposed service revenue of \$204,556 less City's accounting deduction for infiltration and inflow of \$81,486, resulting in a net increase to TCWS's service revenue of \$123,070, and a total customer increase in water and sewer rates of 11.16%.

ORDER

IT IS THEREFORE ORDERED THAT:

1. TCWS is entitled to the opportunity to earn a 9.6% return on equity, a 7.99% return on rate base, additional service revenue of \$123,070 and a total customer increase in water and sewer rates of 11.16%. The water rate for a single family equivalent (SFE) is \$8.71 for the base charge and \$2.06 per thousand gallons. The sewer rate for a SFE is \$35.47.

2. The rates and schedules in Appendix A attached hereto are hereby adopted by the Commission and are Ordered to be put into effect by TCWS within thirty (30) days of the issuance of this Order or in the Company's next billing cycle. The schedules shall be deemed to be filed with the Commission pursuant to S.C. Code Ann. §58-5-240 (Supp. 2009).

3 The Company increase flushing to once per month to address water quality concerns raised by the public witnesses and as recommended in ORS witness Morgan's testimony.

4. TCWS shall conduct periodic informational sessions no less frequently than twice a year with its customers and ORS in an effort to formulate an action plan to resolve non-billing complaints about the System.

5. The Company is directed to file a written report with the Commission and provide a copy to ORS three months from the date of this order detailing customers contacted, the problems encountered, the efforts undertaken, and the results achieved with regard to customer complaints about non-billing issues

6. All other charges and modifications to certain terms and conditions for the provision of water service set forth in the Application are hereby approved.

7. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Elizabeth B. "Lib" Fleming, Chairman

ATTEST:

John E. "Butch" Howard, Vice Chairman

(SEAL)